

**TWENTY-EIGHTH DAY - FEBRUARY 19, 2004**

**LEGISLATIVE JOURNAL**

**NINETY-EIGHTH LEGISLATURE  
SECOND SESSION**

**TWENTY-EIGHTH DAY**

Legislative Chamber, Lincoln, Nebraska  
Thursday, February 19, 2004

**PRAYER**

The prayer was offered by Mother Jane Heenan, Rector of Holy Trinity Episcopal Church, Lincoln.

**ROLL CALL**

Pursuant to adjournment, the Legislature met at 9:00 a.m., Speaker Bromm presiding.

The roll was called and all members were present except Senator Burling who was excused; and Senators Beutler, Brashear, Hartnett, Jensen, Kremer, Maxwell, and Raikes who were excused until they arrive.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the twenty-seventh day was approved.

**STANDING COMMITTEE REPORTS**

**Banking, Commerce and Insurance**

**LEGISLATIVE BILL 630.** Indefinitely postponed.  
**LEGISLATIVE BILL 652.** Indefinitely postponed.  
**LEGISLATIVE BILL 687.** Indefinitely postponed.  
**LEGISLATIVE BILL 737.** Indefinitely postponed.  
**LEGISLATIVE BILL 839.** Indefinitely postponed.  
**LEGISLATIVE BILL 886.** Indefinitely postponed.  
**LEGISLATIVE BILL 966.** Indefinitely postponed.  
**LEGISLATIVE BILL 990.** Indefinitely postponed.  
**LEGISLATIVE BILL 1143.** Indefinitely postponed.  
**LEGISLATIVE BILL 1186.** Indefinitely postponed.  
**LEGISLATIVE BILL 1244.** Indefinitely postponed.

(Signed) Mark Quandahl, Chairperson

**Transportation and Telecommunications****LEGISLATIVE BILL 989.** Indefinitely postponed.

(Signed) Tom Baker, Chairperson

**AMENDMENT - Print in Journal**Senators Beutler and Quandahl filed the following amendment to LB 999:  
FA1471

Amend AM2339

1. Strike section 29.

**MOTION - Approve Appointments**

Senator Schrock moved the adoption of the Natural Resources Committee report for the confirmation of the following appointments found on page 638:

Environmental Quality Council

Janet Bernard

James Whitaker

Voting in the affirmative, 36:

Aguilar	Cunningham	Jones	Price	Synowiecki
Baker	Engel	Kruse	Quandahl	Thompson
Bourne	Erdman	Landis	Redfield	Tyson
Bromm	Foley	McDonald	Schimek	Vrtiska
Byars	Friend	Mines	Schrock	
Combs	Hudkins	Mossey	Smith	
Connealy	Janssen	Pedersen, Dw.	Stuhr	
Cudaback	Johnson	Pederson, D.	Stuthman	

Voting in the negative, 0.

Present and not voting, 5:

Brown	Chambers	Louden	Preister	Wehrbein
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Excused and not voting, 8:

Beutler	Burling	Jensen	Maxwell
Brashear	Hartnett	Kremer	Raikes

The appointments were confirmed with 36 ayes, 0 nays, 5 present and not voting, and 8 excused and not voting.

# SELECT FILE

**LEGISLATIVE RESOLUTION 14CA.** Senator Smith renewed his pending amendment, FA1469, found on page 659.

## SENATOR CUDABACK PRESIDING

Pending.

## STANDING COMMITTEE REPORTS

### Health and Human Services

**LEGISLATIVE BILL 599.** Placed on General File as amended.  
(Standing Committee amendment, AM2502, is printed separately and available in the Bill Room, Room 1104.)

**LEGISLATIVE BILL 1139.** Placed on General File as amended.  
Standing Committee amendment to LB 1139:  
AM2650

- 1 1. Strike the original sections and insert the following
- 2 new sections:
- 3 "Section 1. Section 71-162, Reissue Revised Statutes of
- 4 Nebraska, is amended to read:
- 5 71-162. (1) It is the intent of the Legislature that the
- 6 revenue to cover the cost of the credentialing system administered
- 7 by the department is to be derived from General Funds, cash funds,
- 8 federal funds, gifts, grants, or fees from individuals or entities
- 9 seeking credentials. The credentialing system includes the
- 10 totality of the credentialing infrastructure and the process of
- 11 issuance and renewal of credentials, examinations, inspections,
- 12 investigations, continuing competency, compliance assurance, and
- 13 the credentialing review process for the following individuals and
- 14 entities that provide health services and health-related services:
- 15 (a) Individuals in the practice of acupuncture; advanced
- 16 practice nursing; asbestos abatement, inspection, project design,
- 17 and training; athletic training; audiology; speech-language
- 18 pathology; chiropractic; dentistry; dental hygiene; environmental
- 19 health; hearing aid instrument dispensing and fitting; lead-based
- 20 paint abatement, inspection, project design, and training; medical
- 21 nutrition therapy; medical radiography; medication aide services;
- 22 medicine and surgery; mental health practice; nursing; ~~nurse aide~~
- 23 nursing assistant or paid dining assistant services; nursing home
- 24 administration; occupational therapy; optometry; osteopathic
- 1 medicine; pharmacy; physical therapy; podiatry; psychology; radon
- 2 detection, measurement, and mitigation; respiratory care; social
- 3 work; swimming pool operation; veterinary medicine and surgery;
- 4 water system operation; constructing or decommissioning water wells
- 5 and installing water well pumps and pumping equipment; and

6 wholesale drug distribution; and  
7 (b) Individuals in the practice of and entities in the  
8 business of cosmetology; electrology; emergency medical services;  
9 esthetics; funeral directing and embalming; massage therapy; and  
10 nail technology.

11 (2) The department shall determine the cost of the  
12 credentialing system for such individuals and entities by  
13 calculating the total of the base costs, the variable costs, and  
14 any adjustments as provided in sections 71-162.01 to 71-162.03.  
15 (3) When fees are to be established pursuant to section  
16 71-162.04 for individuals or entities other than individuals in the  
17 practice of constructing or decommissioning water wells and  
18 installing water well pumps and pumping equipment, the department,  
19 upon recommendation of the appropriate board if applicable, shall  
20 base the fees on the cost of the credentialing system and shall  
21 include usual and customary cost increases, a reasonable reserve,  
22 and the cost of any new or additional credentialing activities.  
23 For individuals in the practice of constructing or decommissioning  
24 water wells and installing water well pumps and pumping equipment,  
25 the Water Well Standards and Contractors' Licensing Board shall  
26 establish the fees as otherwise provided in this subsection. All  
27 such fees shall be collected as provided in section 71-163.

1 Sec. 2. Section 71-6038, Reissue Revised Statutes of  
2 Nebraska, is amended to read:  
3 71-6038. For purposes of sections 71-6038 to 71-6042;  
4 ~~unless the context otherwise requires~~ and sections 7 to 11 of this  
5 act:

6 (1) Complicated feeding problems include, but are not  
7 limited to, difficulty swallowing, recurrent lung aspirations, and  
8 tube or parenteral or intravenous feedings;

9 (2) Department ~~shall mean~~ means the Department of Health  
10 and Human Services Regulation and Licensure; ~~and~~

11 (3) Nursing assistant ~~shall mean~~ means any person;  
12 ~~other than a licensed registered or practical nurse,~~ employed by a  
13 nursing home for the purpose of aiding a licensed registered or  
14 practical nurse through the performance of nonspecialized tasks  
15 related to the personal care and comfort of residents other than a  
16 paid dining assistant or a licensed registered or practical nurse;

17 (4) Nursing home means any facility or a distinct part of  
18 any facility that provides care as defined in sections 71-420,  
19 71-421, 71-422, 71-424, and 71-429; and

20 (5) Paid dining assistant means any person employed by a  
21 nursing home for the purpose of aiding a licensed registered or  
22 practical nurse through the feeding of residents other than a  
23 nursing assistant or a licensed registered or practical nurse.

24 Sec. 3. Section 71-6039, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

26 71-6039. (1) No person shall act as a nursing assistant  
27 in a nursing home unless such person:

1 ~~(1)~~ (a) Is at least sixteen years of age and has not been  
 2 convicted of a crime involving moral turpitude;  
 3 ~~(2)~~ (b) Is able to speak and understand the English  
 4 language or a language understood by a substantial portion of the  
 5 nursing home residents; and  
 6 ~~(3)~~ (c) Has successfully completed a basic course of  
 7 training approved by the department for nursing assistants within  
 8 one hundred twenty days of initial employment in the capacity of a  
 9 nursing assistant at any nursing home if employment begins after  
 10 January 1, 1984.

11 (2) The department may prescribe a curriculum for  
 12 training nursing assistants and may adopt and promulgate rules and  
 13 regulations for such courses of training. The content of the  
 14 courses of training and competency evaluation programs shall be  
 15 consistent with federal requirements unless exempted. The  
 16 department may approve courses of training if such courses of  
 17 training meet the requirements of this section. Such courses of  
 18 training shall include instruction on the responsibility of each  
 19 nursing assistant to report suspected abuse or neglect pursuant to  
 20 sections 28-372 and 28-711. Nursing homes may carry out approved  
 21 courses of training within the nursing home, except that nursing  
 22 homes may not conduct the competency evaluation part of the  
 23 program. The prescribed training shall be administered by a  
 24 licensed registered nurse.

25 ~~Prior to October 1, 1990, for nursing assistants at all~~  
 26 ~~nursing homes, and on and after such date for~~ (3) For nursing  
 27 assistants at intermediate care facilities for the mentally  
 1 retarded, such courses of training shall be no less than twenty  
 2 hours in duration and shall include at least fifteen hours of basic  
 3 personal care training and five hours of basic therapeutic and  
 4 emergency procedure training, and ~~on and after October 1, 1990, for~~  
 5 nursing assistants at all nursing homes other than intermediate  
 6 care facilities for the mentally retarded, such courses shall be no  
 7 less than seventy-five hours in duration.

8 (4) This section shall not prohibit any facility from  
 9 exceeding the minimum hourly or training requirements.

10 Sec. 4. Section 71-6040, Reissue Revised Statutes of  
 11 Nebraska, is amended to read:

12 71-6040. The ~~Department of Health and Human Services~~  
 13 ~~Regulation and Licensure department~~ shall approve all courses,  
 14 lectures, seminars, course materials, or other instructional  
 15 programs used to meet the requirements of sections 71-6038 to  
 16 71-6042 and sections 7 to 11 of this act.

17 Sec. 5. Section 71-6041, Reissue Revised Statutes of  
 18 Nebraska, is amended to read:

19 71-6041. To protect the health, safety, and welfare of  
 20 nursing home residents and the public, the ~~Department of Health and~~  
 21 ~~Human Services Regulation and Licensure department~~ shall adopt and  
 22 promulgate such rules and regulations as are necessary for the

23 effective administration of sections 71-6038 to 71-6042 and  
24 sections 7 to 11 of this act. Such rules and regulations shall be  
25 consistent with federal requirements developed by the United States  
26 Department of Health and Human Services.

27 Sec. 6. Section 71-6042, Reissue Revised Statutes of  
1 Nebraska, is amended to read:

2 71-6042. The department shall have the authority to  
3 enforce sections 71-6038 to 71-6042 and sections 7 to 11 of this  
4 act and such rules and regulations adopted thereto under section  
5 71-6041 by any of the following means: ~~denial~~ Denial, suspension,  
6 restriction, or revocation of a nursing home's license, refusal of  
7 the renewal of a nursing home's license, restriction of a nursing  
8 home's admissions, or any other enforcement provision granted to  
9 the department.

10 Sec. 7. No person shall act as a paid dining assistant  
11 in a nursing home unless such person:

12 (1) Is at least sixteen years of age;  
13 (2) Is able to speak and understand the English language  
14 or a language understood by the nursing home resident being fed by  
15 such person;

16 (3) Has successfully completed at least eight hours of  
17 training as prescribed by the department for paid dining  
18 assistants;

19 (4) Has no adverse findings on the Nurse Aide Registry or  
20 the Adult Protective Services Central Registry; and

21 (5) Has no adverse findings on the central register  
22 created in section 28-718 if the nursing home which employs such  
23 person as a paid dining assistant has more than one resident under  
24 the age of nineteen years.

25 Sec. 8. A paid dining assistant shall:

26 (1) Only feed residents who have no complicated feeding  
27 problems as selected by the nursing home based on the resident's  
1 latest assessment and plan of care and a determination by the  
2 charge nurse that the resident's condition at the time of such  
3 feeding meets that plan of care;

4 (2) Work under the supervision of a licensed registered  
5 or practical nurse who is in the nursing home and immediately  
6 available; and

7 (3) Call a supervisor for help in an emergency.

8 Sec. 9. (1) The department may prescribe a curriculum  
9 for training paid dining assistants and may adopt and promulgate  
10 rules and regulations for such courses of training. Such courses  
11 shall be no less than eight hours in duration. The department may  
12 approve courses of training for paid dining assistants that meet  
13 the requirements of this section. Nursing homes may carry out  
14 approved courses of training and competency evaluation programs at  
15 the nursing home. Training of paid dining assistants shall be  
16 provided by a licensed registered nurse.

17 (2) Courses of training and competency evaluation

18 programs for paid dining assistants shall include:

19 (a) Feeding techniques;

20 (b) Assistance with feeding and hydration;

21 (c) Communication and interpersonal skills;

22 (d) Appropriate responses to resident behavior;

23 (e) Safety and emergency procedures, including the

24 abdominal thrust maneuver;

25 (f) Infection control;

26 (g) Resident rights;

27 (h) Recognizing abnormal changes in resident behavior and

1 reporting such changes to a supervising nurse;

2 (i) Special needs; and

3 (j) Abuse and neglect, including the responsibility to

4 report suspected abuse or neglect pursuant to sections 28-372 and

5 28-711.

6 (3) This section shall not prohibit any facility from

7 exceeding the minimum hourly or training requirements.

8 Sec. 10. The department shall maintain a paid dining

9 assistant registry and shall include in the registry individuals

10 who have successfully completed a paid dining assistant course of

11 training and a competency evaluation program.

12 Sec. 11. Each nursing home shall maintain (1) a record

13 of all paid dining assistants employed by such facility, (2)

14 verification of successful completion of a training course for each

15 paid dining assistant, and (3) verification that the facility has

16 made checks with the Nurse Aide Registry, the Adult Protective

17 Services Central Registry, and the central register created in

18 section 28-718, if applicable under section 7 of this act, with

19 respect to each paid dining assistant.

20 Sec. 12. Section 81-3201, Revised Statutes Supplement,

21 2003, is amended to read:

22 81-3201. (1) The Governor shall appoint a Director of

23 Regulation and Licensure for the Department of Health and Human

24 Services Regulation and Licensure who shall (a) have administrative

25 experience in an executive capacity and some special training in

26 public health work and (b) be either a graduate of a recognized

27 school of medicine and licensed to practice medicine and surgery in

1 the State of Nebraska or a person with a recognized and

2 demonstrated expertise in and knowledge of health and human

3 services delivery. The director shall report to the Governor and

4 serve full time at the pleasure of the Governor. The director

5 shall be subject to confirmation by a majority vote of the members

6 of the Legislature as provided in section 81-102.

7 (2) If the director appointed under subsection (1) of

8 this section is not a licensed physician, the Governor shall

9 appoint a chief medical officer to be responsible for oversight of

10 health issues for the Nebraska Health and Human Services System.

11 The chief medical officer shall report to the Governor and serve

12 full time at the pleasure of the Governor and shall be subject to

13 confirmation by a majority of the members of the Legislature. The  
 14 chief medical officer shall be a graduate of a recognized school of  
 15 medicine and licensed to practice medicine and surgery in the State  
 16 of Nebraska and have some special training in public health work.

17 If a chief medical officer is appointed, he or she shall perform  
 18 the duties under the Uniform Licensing Law specified in section  
 19 71-155.01 and shall be the final decisionmaker in contested cases  
 20 of (a) the health care facilities defined in the Health Care  
 21 Facility Licensure Act arising under the act and sections 71-6042  
 22 and 81-604.03 and (b) occupations ~~referenced in sections 71-6038~~  
 23 ~~and 71-6039~~ defined in subdivisions (3) and (5) of section 71-6038.

24 Sec. 13. Original sections 71-162 and 71-6038 to  
 25 71-6042, Reissue Revised Statutes of Nebraska, and section 81-3201,  
 26 Revised Statutes Supplement, 2003, are repealed.

27 Sec. 14. The following sections are outright repealed:

1 Sections 71-6014 and 71-6015, Reissue Revised Statutes of Nebraska.

2 Sec. 15. Since an emergency exists, this act takes  
 3 effect when passed and approved according to law."

**LEGISLATIVE BILL 1198.** Placed on General File as amended.

Standing Committee amendment to LB 1198:

AM2472

1 1. Strike section 1 and insert the following new  
 2 section:

3 "Section 1. Section 71-409, Reissue Revised Statutes of  
 4 Nebraska, is amended to read:

5 71-409. Critical access hospital means a facility (1)(a)  
 6 which was licensed under the Health Care Facility Licensure Act on  
 7 or after January 1, 2004, with up to fifteen acute care inpatient  
 8 beds or (b) which was licensed under the act prior to January 1,  
 9 2004, with up to twenty-five acute care inpatient beds, (2) where  
 10 care or treatment is provided on an outpatient basis or on an  
 11 inpatient basis to persons for an average period of not more than  
 12 ninety-six hours and emergency services are provided on a  
 13 twenty-four-hour basis, and ~~(2)~~ (3) which has formal agreements  
 14 with at least one hospital and other appropriate providers for  
 15 services such as patient referral and transfer, communications  
 16 systems, provision of emergency and nonemergency transportation,  
 17 and backup medical and emergency services."

**LEGISLATIVE BILL 1100.** Indefinitely postponed.

The Health and Human Services Committee desires to report favorably upon  
 the appointment(s) listed below. The Committee suggests the  
 appointment(s) be confirmed by the Legislature and suggests a record vote.

Board of Emergency Medical Services  
 Ronald F. Balthazor  
 Bruce A. Beins



Joel E. Cerny  
David T. Engler  
Dan L. Hakel  
Robert K. Olson  
Val D. Snyder  
George Tom Surber  
Diane L. Yetter

VOTE: Aye: Senators Jensen, Byars, Cunningham, Maxwell, Erdman, Stuthman, and Johnson. Nay: None. Absent: None.

The Health and Human Services Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

Child Abuse Prevention Fund Board  
Jennie Cole-Mossman  
Debra Phelps

VOTE: Aye: Senators Jensen, Byars, Cunningham, Maxwell, Erdman, Stuthman, and Johnson. Nay: None. Absent: None.

The Health and Human Services Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

Commission for the Blind and Visually Impaired  
Robert Burns  
Barbara Loos  
William Orester

VOTE: Aye: Senators Jensen, Byars, Cunningham, Maxwell, Erdman, Stuthman, and Johnson. Nay: None. Absent: Senator .

The Health and Human Services Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

State Board of Health  
Timothy Crockett  
Kent H. Forney  
Clinton Schafer  
Jerry Vaughan  
Gwen Weber

VOTE: Aye: Senators Jensen, Byars, Cunningham, Maxwell, Erdman, Stuthman, and Johnson. Nay: None. Absent: None.

The Health and Human Services Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

Foster Care Review Board

Margaret Connealy

Jim Ganz

Kay Lynn Goldner

Judy Meter

David Patterson

Thomas Poulton

Burrell S. Williams

VOTE: Aye: Senators Jensen, Byars, Cunningham, Maxwell, Erdman, Stuthman, and Johnson. Nay: None. Absent: None.

The Health and Human Services Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

Commission for the Deaf and Hard of Hearing

Margaret Coleman

James P. Devaney

Kenya S. Taylor

Cecelia J. Bevard

VOTE: Aye: Senators Jensen, Byars, Cunningham, Maxwell, Erdman, Stuthman, and Johnson. Nay: None. Absent: None.

The Health and Human Services Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

Rural Health Advisory Commission

Angela Brennan

Donald Frey

Rebecca Schroeder

Michael Sitorius

William Welch

Roger Wells

VOTE: Aye: Senators Jensen, Byars, Cunningham, Maxwell, Erdman, Stuthman, and Johnson. Nay: None. Absent: None.

(Signed) Jim Jensen, Chairperson

**NOTICE OF COMMITTEE HEARING**  
**Nebraska Retirement Systems**  
 Room 1525

Thursday, February 26, 2004  
 Dale L. Kahla - Public Employees Retirement Board

12:15 p.m.

(Signed) Elaine Stuhr, Chairperson

**AMENDMENTS - Print in Journal**

Senator Kruse filed the following amendment to LB 526:  
 AM2699

- 1 1. Strike the original sections and all amendments
- 2 thereto and insert the following new sections:
- 3 "Section 1. Section 29-2524, Revised Statutes
- 4 Supplement, 2003, is amended to read:
- 5 29-2524. Nothing in sections 25-1140.09, 28-303, 28-313,
- 6 and 29-2519 to 29-2546 and sections 7 to 9 of this act shall be in
- 7 any way deemed to repeal or limit existing procedures for automatic
- 8 review of capital cases, nor shall they in any way limit the right
- 9 of the Supreme Court to reduce a sentence of death to a sentence of
- 10 life imprisonment without parole in accordance with the provisions
- 11 of section 29-2308, nor shall they limit the right of the Board of
- 12 Pardons to commute any sentence of death to a sentence of life
- 13 imprisonment without parole.
- 14 Sec. 2. Section 29-2532, Reissue Revised Statutes of
- 15 Nebraska, is amended to read:
- 16 29-2532. (1)(a) The mode of inflicting the punishment of
- 17 death, in all cases, shall be, at the option of the convicted
- 18 person being punished, (i) by causing to pass through the body of
- 19 the convicted person a current or currents of electricity of
- 20 sufficient intensity to cause death; and the application of such
- 21 current or currents shall be continued until such convicted person
- 22 is dead, (ii) by intravenous administration of a lethal quantity of
- 23 an ultra-short-acting barbiturate in combination with a chemical
- 24 paralytic agent and potassium chloride, or other equally effective
- 1 substances, sufficient to cause death, or (iii) by beheading by
- 2 means of a heavy blade that slides down vertical guides.
- 3 (b) The warden of the Department of Correctional Services
- 4 facility designated by the Director of Correctional Services to
- 5 carry out the sentence of death, or his or her designee, shall
- 6 provide written notice to the convicted person of the requirement
- 7 to choose a mode of inflicting the punishment of death set forth in
- 8 this section within thirty days after the effective date of this
- 9 act. Such notice shall state that a failure to choose shall result
- 10 in the punishment of death being inflicted pursuant to subdivision
- 11 (1)(a)(iii) of this subsection. If a choice is made by the

12 convicted person, it shall be made in writing and received by the  
13 warden or his or her designee within thirty days after receipt by  
14 the convicted person of the warden's written notice.

15 (c) If the convicted person being punished fails to  
16 choose as provided in this subsection, the mode of inflicting the  
17 punishment of death shall be pursuant to subdivision (1)(a)(iii) of  
18 this section.

19 (2) The warden of the ~~Nebraska Penal and Correctional~~  
20 ~~Complex~~ Department of Correctional Services facility designated by  
21 the Director of Correctional Services to carry out the sentence of  
22 death, and in case of his such warden's death, sickness, absence,  
23 or inability to act, then the deputy warden, shall be the  
24 executioner. The ; PROVIDED, the warden may in writing specially  
25 designate and appoint a suitable and competent person to act for  
26 him or her, and under his or her direction, as executioner in any  
27 particular case. A crime punishable by death must shall be  
1 punished according to the provisions herein made this section and  
2 not otherwise.

3 (3) If the Supreme Court of the United States declares  
4 that the mode of inflicting the punishment of death under  
5 subdivision (1)(a)(i), (ii), or (iii) of this section violates the  
6 United States Constitution, or if the Nebraska Supreme Court  
7 declares that the mode of inflicting the punishment of death under  
8 subdivision (1)(a)(i), (ii), or (iii) of this section violates the  
9 United States Constitution or the Constitution of Nebraska, the  
10 mode of inflicting the punishment of death shall be by the other  
11 remaining statutory modes of inflicting the punishment of death.

12 Sec. 3. Section 29-2533, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14 29-2533. When any convicted person shall be sentenced to  
15 be electrocuted is punished by death, such punishment shall be  
16 inflicted within the walls of the Department of Correctional  
17 Services adult correctional facility; at a Department of  
18 Correctional Services facility or within the yard or enclosure  
19 adjacent thereto; under the supervision of the warden of such  
20 facility and in such a manner as to exclude the view of all persons  
21 save except those permitted to be present as provided in sections  
22 29-2534 and 29-2535.

23 Sec. 4. Section 29-2542, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25 29-2542. If any person escapes who has been convicted of  
26 a crime punishable by death, and has been sentenced to be  
27 electrocuted death, shall escape, and shall not be and has not been  
1 retaken before the time fixed for his or her execution, it shall be  
2 lawful for the warden the Director of Correctional Services or his  
3 or her designee may rearrest such person, or any sheriff or other  
4 officer or person to may rearrest such person and return him or her  
5 to the custody of the warden of the Nebraska Penal and Correctional  
6 Complex, who Department of Correctional Services. The director

7 shall ~~thereupon make return thereof to~~ then notify the Governor of  
8 the state, and the Governor shall ~~thereupon~~ issue a warrant, fixing  
9 and appointing a day for the execution. The director shall ensure  
10 that the designated ; which shall be carried into effect by the  
11 warden carry out the execution in the same manner as herein  
12 provided for the execution of an original a sentence of death.

13 Sec. 5. Section 29-2543, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15 29-2543. Whenever any person has been tried and  
16 convicted before any district court in this state of a crime  
17 punishable by death and under the conviction has been sentenced ~~by~~  
18 ~~the court to suffer to~~ death, it shall be the duty of the clerk of  
19 the court before which the conviction was had to issue a warrant,  
20 under the seal of the court, reciting therein the conviction and  
21 sentence directed to the ~~warden of the Nebraska Penal and~~  
22 ~~Correctional Complex~~ Director of Correctional Services, commanding  
23 ~~him or her the director to proceed at the time named in the~~  
24 ~~sentence to carry the same into execution by causing the person so~~  
25 ~~convicted and sentenced to be electrocuted by the passage of an~~  
26 ~~electric current through the body until dead~~ cause the death of the  
27 convicted person. The clerk shall deliver the warrant to the

1 sheriff of the county in which conviction was had and such sheriff  
2 shall thereupon forthwith remove such convicted person to a  
3 Department of Correctional Services ~~adult correctional~~ facility of  
4 the state and there deliver him or her, together with the warrant,  
5 into the custody of the ~~warden~~ director who shall receive and  
6 safely keep such ~~convict~~ convicted person within a Department of  
7 Correctional Services ~~adult correctional~~ facility until the time of  
8 execution or until otherwise ordered by competent authority.

9 Sec. 6. Section 29-2544, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11 29-2544. It shall be the duty of the ~~warden of the~~  
12 ~~Nebraska Penal and Correctional Complex~~ Director of Correctional  
13 Services on receipt of such warrant, if the Supreme Court or a  
14 judge thereof shall not have ordered a suspension of the execution,  
15 and if the Board of Pardons shall not have commuted such sentence,  
16 or granted a reprieve or pardon to such convict, to proceed at the  
17 time named in the warrant to carry the sentence into execution in  
18 the manner herein provided; and of the manner of his or her  
19 executing the warrant, and of his or her doings thereon, he or she  
20 shall forthwith make return to the clerk, who shall cause the  
21 warrant and return to be recorded as a part of the records of the  
22 case.

23 Sec. 7. Notwithstanding any other provision of law, the  
24 assistance with, participation in, or performance of ancillary or  
25 other functions pursuant to the administration of the substance or  
26 substances described in subdivision (1)(a)(ii) of section 29-2532  
27 in order to carry out the punishment of death as provided by law  
1 shall not be construed to constitute the practice of medicine and

2 shall not be a violation of the Uniform Controlled Substances Act  
3 or sections 71-2501 to 71-2512.

4 Sec. 8. Notwithstanding any other provision of law, any  
5 pharmacist or pharmaceutical supplier is authorized to distribute  
6 drugs to the Director of Correctional Services or his or her  
7 designee, without prescription, in order to carry out the  
8 punishment of death as provided by law.

9 Sec. 9. The Department of Correctional Services shall  
10 adopt and promulgate rules and regulations establishing the  
11 policies and procedures for carrying out the method of inflicting  
12 the death penalty.

13 Sec. 10. If any section in this act or any part of any  
14 section is declared invalid or unconstitutional, the declaration  
15 shall not affect the validity or constitutionality of the remaining  
16 portions.

17 Sec. 11. Original sections 29-2532, 29-2533, 29-2542,  
18 29-2543, and 29-2544, Reissue Revised Statutes of Nebraska, and  
19 section 29-2524, Revised Statutes Supplement, 2003, are repealed.

20 Sec. 12. Since an emergency exists, this act takes  
21 effect when passed and approved according to law.".

Senator Kruse filed the following amendment to LB 526:  
AM2700

1 1. Strike the original sections and insert the following  
2 new sections:

3 "Section 1. Section 29-2524, Revised Statutes  
4 Supplement, 2003, is amended to read:  
5 29-2524. Nothing in sections 25-1140.09, 28-303, 28-313,  
6 and 29-2519 to 29-2546 and sections 7 to 9 of this act shall be in  
7 any way deemed to repeal or limit existing procedures for automatic  
8 review of capital cases, nor shall they in any way limit the right  
9 of the Supreme Court to reduce a sentence of death to a sentence of  
10 life imprisonment without parole in accordance with the provisions  
11 of section 29-2308, nor shall they limit the right of the Board of  
12 Pardons to commute any sentence of death to a sentence of life  
13 imprisonment without parole.

14 Sec. 2. Section 29-2532, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16 29-2532. (1)(a) The mode of inflicting the punishment of  
17 death, in all cases, shall be, at the option of the convicted  
18 person being punished, (i) by causing to pass through the body of  
19 the convicted person a current or currents of electricity of  
20 sufficient intensity to cause death; and the application of such  
21 current or currents shall be continued until such convicted person  
22 is dead, (ii) by intravenous administration of a lethal quantity of  
23 an ultra-short-acting barbiturate in combination with a chemical  
24 paralytic agent and potassium chloride, or other equally effective  
1 substances, sufficient to cause death, (iii) by beheading by means  
2 of a heavy blade that slides down vertical guides, or (iv) by a

3 squad detailed to carry out the punishment of death by shooting the  
4 convicted person.

5 (b) The warden of the Department of Correctional Services  
6 facility designated by the Director of Correctional Services to  
7 carry out the sentence of death, or his or her designee, shall  
8 provide written notice to the convicted person of the requirement  
9 to choose a mode of inflicting the punishment of death set forth in  
10 this section within thirty days after the effective date of this  
11 act. Such notice shall state that a failure to choose shall result  
12 in the punishment of death being inflicted pursuant to subdivision  
13 (1)(a)(iv) of this subsection. If a choice is made by the  
14 convicted person, it shall be made in writing and received by the  
15 warden or his or her designee within thirty days after receipt by  
16 the convicted person of the warden's written notice.

17 (c) If the convicted person being punished fails to  
18 choose as provided in this subsection, the mode of inflicting the  
19 punishment of death shall be pursuant to subdivision (1)(a)(iv) of  
20 this section.

21 (2) The warden of the ~~Nebraska Penal and Correctional~~  
22 ~~Complex~~ Department of Correctional Services facility designated by  
23 the Director of Correctional Services to carry out the sentence of  
24 death, and in case of his such warden's death, sickness, absence,  
25 or inability to act, then the deputy warden, shall be the  
26 executioner. The ; PROVIDED, the warden may in writing specially  
27 designate and appoint a suitable and competent person to act for  
1 him or her, and under his or her direction, as executioner in any  
2 particular case. A crime punishable by death must shall be  
3 punished according to the provisions herein made this section and  
4 not otherwise.

5 (3) If the Supreme Court of the United States declares  
6 that the mode of inflicting the punishment of death under  
7 subdivision (1)(a)(i), (ii), (iii), or (iv) of this section  
8 violates the United States Constitution, or if the Nebraska Supreme  
9 Court declares that the mode of inflicting the punishment of death  
10 under subdivision (1)(a)(i), (ii), (iii), or (iv) of this section  
11 violates the United States Constitution or the Constitution of  
12 Nebraska, the mode of inflicting the punishment of death shall be  
13 by the other remaining statutory modes of inflicting the punishment  
14 of death.

15 Sec. 3. Section 29-2533, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17 29-2533. When any convicted person shall be sentenced to  
18 be electrocuted is punished by death, such punishment shall be  
19 inflicted within the walls of the Department of Correctional  
20 Services adult correctional facility, at a Department of  
21 Correctional Services facility or within the yard or enclosure  
22 adjacent thereto, under the supervision of the warden of such  
23 facility and in such a manner as to exclude the view of all persons  
24 save except those permitted to be present as provided in sections

25 29-2534 and 29-2535.

26 Sec. 4. Section 29-2542, Reissue Revised Statutes of  
27 Nebraska, is amended to read:

1 29-2542. If any person escapes who has been convicted of  
2 a crime punishable by death, ~~and has been sentenced to be~~  
3 ~~electrocuted death, shall escape, and shall not be and has not been~~  
4 ~~retaken before the time fixed for his or her execution, it shall be~~  
5 ~~lawful for the warden the Director of Correctional Services or his~~  
6 ~~or her designee may rearrest such person, or any sheriff or other~~  
7 ~~officer or person to may rearrest such person and return him or her~~  
8 ~~to the custody of the warden of the Nebraska Penal and Correctional~~  
9 ~~Complex, who Department of Correctional Services. The director~~  
10 ~~shall thereupon make return thereof to then notify~~ the Governor of  
11 the state, and the Governor shall ~~thereupon~~ issue a warrant, fixing  
12 and appointing a day for the execution. The director shall ensure  
13 that the designated ; which shall be carried into effect by the  
14 warden carry out the execution in the same manner as ~~herein~~  
15 provided for the execution of ~~an original a~~ sentence of death.

16 Sec. 5. Section 29-2543, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18 29-2543. Whenever any person has been tried and  
19 convicted before any district court in this state of a crime  
20 punishable by death and under the conviction has been sentenced ~~by~~  
21 ~~the court to suffer to~~ death, it shall be the duty of the clerk of  
22 the court before which the conviction was had to issue a warrant,  
23 under the seal of the court, reciting therein the conviction and  
24 sentence directed to the ~~warden of the Nebraska Penal and~~  
25 ~~Correctional Complex~~ Director of Correctional Services, commanding  
26 ~~him or her the director~~ to ~~proceed at the time named in the~~  
27 ~~sentence to carry the same into execution by causing the person so~~  
1 ~~convicted and sentenced to be electrocuted by the passage of an~~  
2 ~~electric current through the body until dead cause the death of the~~  
3 ~~convicted person~~. The clerk shall deliver the warrant to the  
4 sheriff of the county in which conviction was had and such sheriff  
5 shall thereupon forthwith remove such convicted person to a  
6 Department of Correctional Services ~~adult correctional~~ facility of  
7 the state and there deliver him or her, together with the warrant,  
8 into the custody of the ~~warden director~~ who shall receive and  
9 safely keep such ~~convict convicted person~~ within a Department of  
10 Correctional Services ~~adult correctional~~ facility until the time of  
11 execution or until otherwise ordered by competent authority.

12 Sec. 6. Section 29-2544, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14 29-2544. It shall be the duty of the ~~warden of the~~  
15 ~~Nebraska Penal and Correctional Complex~~ Director of Correctional  
16 Services on receipt of such warrant, if the Supreme Court or a  
17 judge thereof shall not have ordered a suspension of the execution,  
18 and if the Board of Pardons shall not have commuted such sentence,  
19 or granted a reprieve or pardon to such convict, to proceed at the



20 time named in the warrant to carry the sentence into execution in  
21 the manner herein provided; and of the manner of his or her  
22 executing the warrant, and of his or her doings thereon, he or she  
23 shall forthwith make return to the clerk, who shall cause the  
24 warrant and return to be recorded as a part of the records of the  
25 case.

26 Sec. 7. Notwithstanding any other provision of law, the  
27 assistance with, participation in, or performance of ancillary or  
1 other functions pursuant to the administration of the substance or  
2 substances described in subdivision (1)(a)(ii) of section 29-2532  
3 in order to carry out the punishment of death as provided by law  
4 shall not be construed to constitute the practice of medicine and  
5 shall not be a violation of the Uniform Controlled Substances Act  
6 or sections 71-2501 to 71-2512.

7 Sec. 8. Notwithstanding any other provision of law, any  
8 pharmacist or pharmaceutical supplier is authorized to distribute  
9 drugs to the Director of Correctional Services or his or her  
10 designee, without prescription, in order to carry out the  
11 punishment of death as provided by law.

12 Sec. 9. The Department of Correctional Services shall  
13 adopt and promulgate rules and regulations establishing the  
14 policies and procedures for carrying out the method of inflicting  
15 the death penalty.

16 Sec. 10. If any section in this act or any part of any  
17 section is declared invalid or unconstitutional, the declaration  
18 shall not affect the validity or constitutionality of the remaining  
19 portions.

20 Sec. 11. Original sections 29-2532, 29-2533, 29-2542,  
21 29-2543, and 29-2544, Reissue Revised Statutes of Nebraska, and  
22 section 29-2524, Revised Statutes Supplement, 2003, are repealed.

23 Sec. 12. Since an emergency exists, this act takes  
24 effect when passed and approved according to law."

The Education Committee designates LB 1048 as its priority bill.

## ANNOUNCEMENTS

Senator Brashear designates LB 1202 as his priority bill.

## SELECT FILE

**LEGISLATIVE RESOLUTION 14CA.** The Smith pending amendment, FA1469, found on page 659 and considered in this day's Journal, was renewed.

Senator Beutler moved the previous question. The question is, "Shall the debate now close?"

Senator Beutler moved for a call of the house. The motion prevailed with 19

ayes, 0 nays, and 30 not voting.

The motion to cease debate prevailed with 25 ayes, 1 nay, and 23 not voting.

Senator Smith requested a roll call vote, in reverse order, on his amendment.

Voting in the affirmative, 19:

Brown	Friend	Jones	Preister	Tyson
Cudaback	Hudkins	Kruse	Quandahl	Vrtiska
Engel	Jensen	Maxwell	Redfield	Wehrbein
Erdman	Johnson	Mossey	Smith	

Voting in the negative, 18:

Aguilar	Byars	Hartnett	Mines	Schimek
Baker	Combs	Janssen	Pederson, D.	Schrock
Beutler	Connealy	Landis	Price	
Bromm	Foley	McDonald	Raikes	

Present and not voting, 8:

Bourne	Kremer	Pedersen, Dw.	Stuthman
Chambers	Louden	Stuhr	Synowiecki

Excused and not voting, 4:

Brashear	Burling	Cunningham	Thompson
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The Smith amendment lost with 19 ayes, 18 nays, 8 present and not voting, and 4 excused and not voting.

The Chair declared the call raised.

Senator Smith renewed his pending amendment, AM2599, found on page 659.

Senator Beutler moved the previous question. The question is, "Shall the debate now close?"

Senator Beutler moved for a call of the house. The motion prevailed with 19 ayes, 1 nay, and 29 not voting.

Senator Beutler requested a roll call vote on the motion to cease debate.

Voting in the affirmative, 23:

Baker	Byars	Hudkins	Preister	Synowiecki
Beutler	Combs	Kruse	Price	Thompson
Bourne	Connealy	Louden	Raikes	Wehrbein
Bromm	Engel	Maxwell	Schrock	
Brown	Hartnett	Pederson, D.	Stuthman	

Voting in the negative, 6:

Erdman	Quandahl	Tyson
Foley	Smith	Vrtiska

Present and not voting, 11:

Cudaback	Jones	Mossey	Schimek
Janssen	Kremer	Pedersen, Dw.	Stuhr
Johnson	McDonald	Redfield	

Excused and not voting, 9:

Aguilar	Burling	Cunningham	Jensen	Mines
Brashear	Chambers	Friend	Landis	

The motion to cease debate failed with 23 ayes, 6 nays, 11 present and not voting, and 9 excused and not voting.

The Chair declared the call raised.

## **SENATOR VRTISKA PRESIDING**

Pending.

### **AMENDMENTS - Print in Journal**

Senator Thompson filed the following amendment to LB 838:  
AM2683

- 1 1. Strike original section 8 and insert the following
- 2 new sections:
- 3 "Section 1. Section 43-1904, Reissue Revised Statutes of
- 4 Nebraska, is amended to read:
- 5 43-1904. The board shall have the following powers and
- 6 duties:
- 7 (1) To meet not less than twice annually at the call of
- 8 the chairperson to conduct its official business;
- 9 (2) To require that at least five of the board members
- 10 approve the awarding of grants made under subdivision (3)(b) of
- 11 this section; and
- 12 (3) To develop, one year after the appointment of the
- 13 original board and annually thereafter, a state plan for the
- 14 distribution and disbursement of money in the fund. The plan

15 developed under this subdivision shall assure that an equal  
16 opportunity exists for the establishment and maintenance of  
17 prevention programs and the receipt of money from the fund in all  
18 geographic areas of this state. The plan shall be transmitted to  
19 the director, the Governor, and the Legislature and made available  
20 to the general public. In carrying out a plan developed under this  
21 subdivision, the board shall establish procedures for:

22 (a) Developing and publicizing criteria for the awarding  
23 of grants for programs to be supported with money from the fund  
24 within the limits of appropriations made for that purpose;

1 (b) Awarding grants to agencies, organizations, or  
2 individuals for community-based child abuse prevention programs.  
3 The programs shall provide education, public awareness, or  
4 prevention services. In awarding grants under this subdivision,  
5 consideration shall be given by the board to factors such as need,  
6 geographic location, diversity, coordination with or improvement of  
7 existing services, and extensive use of volunteers;

8 (c) Supporting and encouraging the formation of local  
9 child abuse councils;

10 (d) Consulting with applicable state agencies,  
11 commissions, and boards to help determine probable effectiveness,  
12 fiscal soundness, and need for proposed community-based educational  
13 and service prevention programs;

14 (e) Facilitating information exchange among groups  
15 concerned with prevention programs; ~~and~~

16 (f) Encouraging statewide educational and public  
17 awareness programs regarding the problems of families and children  
18 which (i) encourage professional persons and groups to recognize  
19 and deal with problems of families and children, (ii) make  
20 information regarding the problems of families and children and the  
21 prevention of such problems available to the general public in  
22 order to encourage citizens to become involved in the prevention of  
23 such problems, and (iii) encourage the development of community  
24 prevention programs; and

25 (g) Reviewing the recommendations of the 2003 report of  
26 the Governor's Children's Task Force and using proceeds from the  
27 sale of child abuse prevention plates allocated to the fund under  
1 section 6 of this act to assist with carrying out the  
2 recommendations of the report or other programs, as determined by  
3 the board, that address child abuse and neglect in Nebraska.

4 Sec. 2. Section 43-1906, Revised Statutes Supplement,  
5 2002, is amended to read:

6 43-1906. (1) There is hereby established the Nebraska  
7 Child Abuse Prevention Fund. The additional docket fee as provided  
8 in section 33-106.03, the additional charge for supplying a  
9 certified copy of the record of any birth as provided in sections  
10 71-612, 71-617.15, 71-627, and 71-628, proceeds from the sale of  
11 child abuse prevention plates allocated to the fund under section 6  
12 of this act, and all amounts which may be received from grants,

13 gifts, bequests, the federal government, or other sources granted  
14 or given for the purposes specified in sections 43-1901 to 43-1906  
15 shall be remitted to the State Treasurer for credit to the Nebraska  
16 Child Abuse Prevention Fund. The fund shall be administered and  
17 disbursed by the department.

18 (2) Any money in the fund available for investment shall  
19 be invested by the state investment officer pursuant to the  
20 Nebraska Capital Expansion Act and the Nebraska State Funds  
21 Investment Act.

22 (3) In any one fiscal year, no more than twenty percent  
23 of the annually appropriated funds shall be disbursed to any one  
24 agency, organization, or individual.

25 (4) Funds allocated from the fund shall only be used for  
26 purposes authorized under sections 43-1901 to 43-1906 and shall not  
27 be used to supplant any existing governmental program or service.

1 No grants may be made to any state department or agency.

2 Sec. 5. (1) The Department of Motor Vehicles shall  
3 design license plates to be known as child abuse prevention plates.  
4 The department shall create designs reflecting support for  
5 preventing child abuse in Nebraska. The design shall be selected  
6 on the basis of (a) enhancing the marketability of the plates to  
7 supporters of the prevention of child abuse and (b) limiting the  
8 manufacturing cost of each plate to an amount less than or equal to  
9 the amount charged for license plates pursuant to subsection (5) of  
10 section 60-311. The department shall make applications available  
11 for each type of plate when it is designed. The department may  
12 adopt and promulgate rules and regulations to carry out this  
13 section and section 6 of this act.

14 (2) One type of child abuse prevention plates shall be  
15 consecutively numbered plates. The department shall (a) number  
16 the plates consecutively beginning with the number one, using  
17 numerals the size of which maximizes legibility and limiting the  
18 numerals to five characters or less, and (b) not use a county  
19 designation or any characters other than numbers on the plates.

20 (3) One type of child abuse prevention plates shall be  
21 personalized message plates. Such plates shall be issued subject  
22 to the same conditions specified for message plates in subsection  
23 (2) of section 60-311.11.

24 Sec. 6. (1) A person may apply to the Department of  
25 Motor Vehicles for child abuse prevention plates in lieu of regular  
26 license plates on an application prescribed and provided by the  
27 department for any passenger vehicle, farm truck, self-propelled  
1 mobile home, cabin trailer, or commercial truck registered for ten  
2 tons gross weight or less pursuant to section 60-302. An applicant  
3 receiving a child abuse prevention plate for a farm truck with a  
4 gross weight of over sixteen tons or for a commercial truck or  
5 truck-tractor registered for a gross weight of five tons or over  
6 shall affix the appropriate tonnage sticker to the plate. The  
7 department shall make forms available for such applications through

8 the county treasurers or designated county officials as provided in  
9 section 60-302.

10 (2)(a) Each application for initial issuance of  
11 consecutively numbered child abuse prevention plates shall be  
12 accompanied by a fee of thirty dollars. An application for renewal  
13 of such plates shall be accompanied by a fee of thirty dollars.  
14 The county treasurer or designated county official subdivision  
15 shall remit the fees to the State Treasurer. The State Treasurer  
16 shall credit one-sixth of the fees for initial issuance and renewal  
17 of such plates to the Department of Motor Vehicles Cash Fund and  
18 five-six of the fees to the Nebraska Child Abuse Prevention Fund.

19 (b) Each application for initial issuance of personalized  
20 message child abuse prevention plates shall be accompanied by a fee  
21 of forty dollars. An application for renewal of such plates shall  
22 be accompanied by a fee of forty dollars. The county treasurer or  
23 designated county official shall remit the fees to the State  
24 Treasurer. The State Treasurer shall credit seventy-five percent  
25 of the fees for initial issuance and renewal of such plates to the  
26 Department of Motor Vehicles Cash Fund and twenty-five percent of  
27 the fees to the Nebraska Child Abuse Prevention Fund.

1 (3) When the department receives an application for child  
2 abuse prevention plates, the department shall deliver the plates to  
3 the county treasurer or designated county official of the county in  
4 which the vehicle is registered. The county treasurer or  
5 designated county official shall issue child abuse prevention  
6 plates in lieu of regular license plates when the applicant  
7 complies with the other provisions of law for registration of the  
8 vehicle. If child abuse prevention plates are lost, stolen, or  
9 mutilated, the licensee shall be issued replacement plates pursuant  
10 to section 60-324.

11 (4)(a) The owner of a vehicle bearing child abuse  
12 prevention plates may make application to the county treasurer or  
13 designated county official as provided in section 60-302 to have  
14 such plates transferred to a motor vehicle other than the vehicle  
15 for which such plates were originally purchased if such vehicle is  
16 owned by the owner of the plates.

17 (b) The owner may have the unused portion of the fee for  
18 the child abuse prevention plates credited to the other vehicle  
19 which will bear the plates at the rate of eight and one-third  
20 percent per month for each full month left in the registration  
21 period.

22 (c) Application for such transfer shall be accompanied by  
23 a fee of three dollars. Fees collected pursuant to this subsection  
24 shall be remitted to the State Treasurer for credit to the  
25 Department of Motor Vehicles Cash Fund.

26 (5) If the cost of manufacturing child abuse prevention  
27 plates at any time exceeds the amount charged for license plates  
1 pursuant to subsection (5) of section 60-311, any money to be  
2 credited to the Nebraska Child Abuse Prevention Fund shall instead

- 3 be credited first to the Highway Trust Fund in an amount equal to  
 4 the difference between the manufacturing costs of child abuse  
 5 prevention plates and the amount charged pursuant to subsection (5)  
 6 of section 60-311 with respect to such plates and the remainder  
 7 shall be credited to the Nebraska Child Abuse Prevention Fund.  
 8 Sec. 12. Original section 43-1904, Reissue Revised  
 9 Statutes of Nebraska, sections 43-1906, 60-311.11, and 60-315,  
 10 Revised Statutes Supplement, 2002, and sections 60-310 and  
 11 60-311.02, Revised Statutes Supplement, 2003, are repealed."  
 12 2. On page 2, line 19, strike "2" and insert "4".  
 13 3. On page 6, line 25; page 9, line 23; and page 11,  
 14 lines 17 and 18, strike "section 2" and insert "sections 4 and 6".  
 15 4. Renumber the remaining sections accordingly.

Senator Vrtiska filed the following amendment to LB 278:  
 AM2679

(Amendments to AM2181)

- 1 1. On page 11, line 3, after "residence" insert "or a  
 2 building that houses a church that has an average weekly attendance  
 3 of not more than one hundred fifty people"; and in line 6 after the  
 4 period insert "For purposes of this subsection, church means a  
 5 building that is erected or converted primarily for public  
 6 religious worship, where services are regularly convened, that is  
 7 exempt from taxation under section 77-202, that is owned by the  
 8 religious organization housed in the building, and which a  
 9 reasonable person would conclude is a church by reason of design,  
 10 signs, or architectural or other features.".

Senator Vrtiska filed the following amendment to LB 278:  
 AM2678

(Amendments to AM2181)

- 1 1. On page 9, after line 9 insert:  
 2 "(3) Notwithstanding any other provision of the  
 3 Conveyance Safety Act, conveyances that have been certified as  
 4 low-use and are located in a building which houses a church shall  
 5 be inspected at no less than five-year intervals. The inspection  
 6 frequency of such conveyances shall be determined according to  
 7 requirements provided in rules and regulations. The commissioner  
 8 shall determine the requirements necessary for a conveyance to be  
 9 certified as a low-use conveyance, and such requirements may be  
 10 documented by the conveyance owner or operator with a certified  
 11 statement of annual use filed with the commissioner annually. For  
 12 purposes of this section, church means a building that is erected  
 13 or converted primarily for public religious worship, where services  
 14 are regularly convened, that is exempt from taxation under section  
 15 77-202, that is owned by the religious organization housed in the  
 16 building, and which a reasonable person would conclude is a church  
 17 by reason of design, signs, or architectural or other features.".

Senator Baker filed the following amendment to LB 479:  
AM2713

(Amendments to E & R amendments, AM7164)

- 1 1. Insert the following new sections:
- 2 "Section 1. Section 66-482, Reissue Revised Statutes of
- 3 Nebraska, is amended to read:
- 4 66-482. For purposes of sections 66-482 to 66-4,149:
- 5 (1) Motor vehicle shall have the same definition as in
- 6 section 60-301;
- 7 (2) Motor vehicle fuel shall include all products and
- 8 fuel commonly or commercially known as gasoline, including casing
- 9 head or natural gasoline, and shall include any other liquid and
- 10 such other volatile and inflammable liquids as may be produced,
- 11 compounded, or used for the purpose of operating or propelling
- 12 motor vehicles, motorboats, or aircraft or as an ingredient in the
- 13 manufacture of such fuel. Agricultural ethyl alcohol produced for
- 14 use as a motor vehicle fuel shall be considered a motor vehicle
- 15 fuel. Motor vehicle fuel shall not include the products commonly
- 16 known as methanol, kerosene oil, kerosene distillate, crude
- 17 petroleum, naphtha, and benzine with a boiling point over two
- 18 hundred degrees Fahrenheit, residuum gas oil, smudge oil, leaded
- 19 automotive racing fuel with an American Society of Testing
- 20 Materials research method octane number in excess of one hundred
- 21 five, and any petroleum product with an initial boiling point under
- 22 two hundred degrees Fahrenheit, a ninety-five percent distillation
- 23 (recovery) temperature in excess of four hundred sixty-four degrees
- 1 Fahrenheit, an American Society of Testing Materials research
- 2 method octane number less than seventy, and an end or dry point of
- 3 distillation of five hundred seventy degrees Fahrenheit maximum;
- 4 (3) Agricultural ethyl alcohol shall mean ethyl alcohol
- 5 produced from cereal grains or agricultural commodities grown
- 6 within the continental United States, and ~~for~~ which is a finished
- 7 product that is a nominally anhydrous ethyl alcohol meeting
- 8 American Society for Testing and Materials D4806 standards. For
- 9 the purpose of sections 66-482 to 66-4,149, the purity of the ethyl
- 10 alcohol shall be determined excluding denaturant and the volume of
- 11 alcohol blended with gasoline for motor vehicle fuel shall include
- 12 the volume of any denaturant required pursuant to law;
- 13 (4) Alcohol blend shall mean a blend of agricultural
- 14 ethyl alcohol in gasoline or other motor vehicle fuel, such blend
- 15 to contain not less than five percent by volume of alcohol;
- 16 (5) Supplier shall mean any person who owns motor vehicle
- 17 fuel imported by barge, barge line, or pipeline and stored at a
- 18 barge, barge line, or pipeline terminal in this state and any
- 19 person who refines and stores motor vehicle fuel at a refinery in
- 20 this state;
- 21 (6) Distributor shall mean any person who acquires
- 22 ownership of motor vehicle fuel directly from a supplier at or from
- 23 a barge, barge line, or pipeline terminal in this state;



24 (7) Wholesaler shall mean any person, other than a  
25 supplier, distributor, or importer, who acquires motor vehicle fuel  
26 for resale;

27 (8) Retailer shall mean any person who acquires motor  
1 vehicle fuel from a supplier, distributor, wholesaler, or importer  
2 for resale to consumers of such fuel;

3 (9) Importer shall mean any person who owns motor vehicle  
4 fuel at the time such fuel enters the State of Nebraska by any  
5 means other than barge, barge line, or pipeline. Importer shall  
6 not include a person who imports motor vehicle fuel in a tank  
7 directly connected to the engine of a motor vehicle, train,  
8 watercraft, or airplane for purposes of providing fuel to the  
9 engine to which the tank is connected;

10 (10) Exporter shall mean any person who acquires  
11 ownership of motor vehicle fuel from any licensed supplier,  
12 distributor, wholesaler, or importer exclusively for use or resale  
13 in another state;

14 (11) Gross gallons shall mean measured gallons without  
15 adjustment or correction for temperature or barometric pressure;

16 (12) Diesel fuel shall mean any fuel defined as diesel  
17 fuel in section 66-654;

18 (13) Compressed fuel shall mean any fuel defined as  
19 compressed fuel in section 66-6,100;

20 (14) Person shall mean any individual, firm, partnership,  
21 limited liability company, company, agency, association,  
22 corporation, state, county, municipality, or other political  
23 subdivision;

24 (15) Department shall mean the Motor Fuel Tax Enforcement  
25 and Collection Division of the Department of Revenue; and

26 (16) Semiannual period shall mean either the period which  
27 begins on January 1 and ends on June 30 of each year or the period  
1 which begins on July 1 and ends on December 31 of each year.

2 Sec. 9. Section 77-4104.01, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4 77-4104.01. The following transactions or activities  
5 shall not create any credits or allow any benefits under the  
6 Employment and Investment Growth Act except as specifically allowed  
7 by this section:

8 (1) The acquisition of a business which is continued by  
9 the taxpayer and which was operated in this state during the three  
10 hundred sixty-six days prior to the date of application or the date  
11 of acquisition, whichever is later. All employees of the acquired  
12 business during such period shall be considered base-year  
13 employees, and the compensation paid during the base year or the  
14 year before acquisition, whichever is later shall be the base-year  
15 compensation. Any investment in the acquisition of such business  
16 shall be considered as being made before the date of application;

17 (2) The moving of a business from one location to  
18 another, which business was operated in this state during the three

19 hundred sixty-six days prior to the date of application. All  
20 employees of the business during such three hundred sixty-six days  
21 shall be considered base-year employees;

22 (3) The purchase or lease of any property which was  
23 previously owned by the taxpayer or a related person. The first  
24 purchase by either the taxpayer or a related person shall be  
25 treated as investment if the item was first placed in service in  
26 this state after the date of the application;

27 (4) The renegotiation of any lease in existence on the  
1 date of application which does not materially change any of the  
2 terms of the lease, other than the expiration date, shall be  
3 presumed to be a transaction entered into for the purpose of  
4 generating benefits under the act and shall not be allowed in the  
5 computation of any benefit or the meeting of any required levels  
6 under the agreement;

7 (5) Any purchase or lease of property from a related  
8 person, except that the taxpayer will be allowed any benefits under  
9 the Employment and Investment Growth Act to which the related  
10 person would have been entitled on the purchase or lease of the  
11 property if the related person was considered the taxpayer; ~~and~~

12 (6) Any transaction entered into primarily for the  
13 purpose of receiving benefits under the act which is without a  
14 business purpose and does not result in increased economic activity  
15 in the state; and

16 (7) For applications received after the effective date of  
17 this act, any activity that results in benefits under the Ethanol  
18 Development Act.

19 Sec. 10. Section 77-5536, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21 77-5536. (1) The board shall determine whether to  
22 approve the company's application by majority vote based on its  
23 determination as to whether the project will sufficiently help  
24 enable the state to accomplish the purposes of the Invest Nebraska  
25 Act. The board shall be governed by and shall take into  
26 consideration all of the following factors in making its  
27 determination:

1 (a) The timing, number, wage levels, employee benefit  
2 package, and types of new jobs to be created by the project;

3 (b) The type of industry in which the company and the  
4 project would be engaged;

5 (c) The timing, amount, and types of investment in  
6 qualified property to be made at the project; and

7 (d) Whether the board believes the project would occur in  
8 this state regardless of whether the application was approved.

9 (2) The weight given to each factor shall be determined  
10 by each board member individually for each application. The  
11 decision of the board shall be made in open meeting and is not  
12 confidential.

13 (3) A project shall be considered eligible under the act

14 and may be approved by the board only if the application defines a  
 15 project consistent with the purposes contained in section 77-5502  
 16 in one or more qualified business activities within this state that  
 17 will result in (a) the investment in qualified property of at least  
 18 ten million dollars and the hiring of a number of new employees of  
 19 at least twenty-five. The investment and new employees for such  
 20 project shall count towards attaining and maintaining such  
 21 thresholds only if the qualified property is located in, and the  
 22 employee's principal place of employment for the company is located  
 23 in, one or more Nebraska counties having a population of less than  
 24 one hundred thousand individuals as of the end of the base year.

25 For this purpose, the population shall be conclusively determined  
 26 by the Department of Revenue, (b) the investment in qualified  
 27 property of at least fifty million dollars and the hiring of a  
 1 number of new employees of at least five hundred, (c) the  
 2 investment in qualified property of at least one hundred million  
 3 dollars and the hiring of a number of new employees of at least two  
 4 hundred fifty, or (d) the investment in qualified property of at  
 5 least two hundred million dollars and the hiring of a number of new  
 6 employees of at least five hundred.

7 (4) The new investment and employment shall occur within  
 8 seven years, meaning by the end of the sixth year after the end of  
 9 the year the application was filed, and shall be maintained for the  
 10 entire entitlement period. These thresholds shall constitute the  
 11 required levels of employment and investment for purposes of the  
 12 act.

13 (5)(a) An individual employed by the company, other than  
 14 a base-year employee, shall be considered an employee for purposes  
 15 of attaining and maintaining the required number of new employees  
 16 and shall be considered an employee whose compensation is included  
 17 in the calculation of the wage benefit credit only if the  
 18 compensation paid by the company to such employee for the year is  
 19 (i) for companies qualifying under the ten million dollar  
 20 investment and twenty-five new employee threshold under subdivision  
 21 (3)(a) of this section, at least one hundred percent of the  
 22 Nebraska average annual wage, (ii) for companies qualifying under  
 23 the fifty million dollar investment and five hundred new employee  
 24 threshold under subdivision (3)(b) of this section or the one  
 25 hundred million dollar investment and two hundred fifty new  
 26 employee threshold under subdivision (3)(c) of this section, at  
 27 least one hundred ten percent of the Nebraska average annual wage;  
 1 and (iii) for the companies applying under the two hundred million  
 2 dollar investment and five hundred new employee threshold of  
 3 subdivision (3)(d) of this section, at least one hundred twenty  
 4 percent of the Nebraska average annual wage.

5 (b) For the purposes of subdivision (a) of this  
 6 subsection, compensation paid by the company to such employee for  
 7 the year shall be the amount paid for the entire year for regular  
 8 hours worked, not including overtime, bonuses, or any other

9 irregular payments. If the employee works for less than a year,  
10 the compensation paid will be annualized solely for the purpose of  
11 comparison with the Nebraska average annual wage.

12 (6) If the project application is approved by the board,  
13 the company and the state shall enter into a written agreement,  
14 which shall be executed on behalf of the state by the Tax  
15 Commissioner. In the agreement the company shall agree to complete  
16 the project and the state shall designate the approved plans of the  
17 company as a project and, in consideration of the company's  
18 agreement, agree to allow the wage benefit credit or the investment  
19 tax credit, as applicable, as provided for in the act. The  
20 application, and all supporting documentation, to the extent  
21 approved, shall be deemed a part of the agreement. The agreement  
22 shall contain such terms and conditions as the board shall specify  
23 in order to carry out the legislative purposes of the act. The  
24 agreement shall contain provisions to allow the Department of  
25 Revenue to verify that the required levels of employment and  
26 investment have been attained and maintained. The agreement shall  
27 contain provisions to require verification that the required levels  
1 have been attained before any credits are used. The agreement  
2 shall contain such other conditions or requirements, if any, for  
3 the company as established by the department to carry out the  
4 purposes of the act.

5 (7) Any investment or employment which is eligible for  
6 benefits under the Quality Jobs Act shall not be included in a  
7 project under the Invest Nebraska Act. A project under the Invest  
8 Nebraska Act may involve the same location as another project under  
9 the Invest Nebraska Act or under the Quality Jobs Act, except that  
10 no new employment or new investment shall be included in more than  
11 one project for either the meeting of the employment or investment  
12 requirements or the creation of tax incentives. When projects  
13 overlap and the project application does not otherwise clearly  
14 specify, the company shall specify in which project the employment  
15 and investment belongs. ~~Any~~

16 (8) For applications for projects that are not receiving  
17 benefits under the Ethanol Development Act or applications filed  
18 before the effective date of this act, any employment or investment  
19 which is eligible for benefits under the Invest Nebraska Act may  
20 also be included in, and create incentives for, a project under the  
21 Employment and Investment Growth Act, the Employment Expansion and  
22 Investment Incentive Act, and the Rural Economic Opportunities Act,  
23 to the extent otherwise allowable under such respective acts. For  
24 applications filed on or after the effective date of this act, a  
25 taxpayer that is receiving benefits under the Ethanol Development  
26 Act may not receive benefits under the Invest Nebraska Act for the  
27 project that generates the incentive under the Ethanol Development  
1 Act.

2 ~~(8)~~ (9) In order to provide the degree of certainty  
3 necessary to enable a project to proceed, and notwithstanding any

4 provision of Nebraska statute or common law to the contrary, to the  
5 extent any such right of appeal or challenge otherwise exists, no  
6 appeal or challenge of the board's decision by any person shall be  
7 filed after the expiration of thirty days after the board's  
8 decision."

9 2. On page 5, line 3, after the first comma insert "and  
10 which has provided to the Department of Revenue written evidence  
11 substantiating that the ethanol facility has received the requisite  
12 authority from the Department of Environmental Quality and from the  
13 United States Department of Justice, Bureau of Alcohol, Tobacco,  
14 Firearms and Explosives."; and strike beginning with "The" in line  
15 11 through the period in line 13 and insert "The new ethanol  
16 facility shall provide an analysis to the Department of Revenue of  
17 samples of the product collected according to procedures specified  
18 by the department no later than July 30, 2004, and at least  
19 annually thereafter. The analysis shall be prepared by an  
20 independent laboratory meeting the International Organization for  
21 Standardization standard ISO/IEC 17025:1999. Prior to collecting  
22 the samples, the new ethanol facility shall notify the department  
23 which may observe the sampling procedures utilized by the new  
24 ethanol facility to obtain the samples to be submitted for  
25 independent analysis. The minimum rate shall be established for a  
26 period of at least thirty days.".

27 3. On page 6, line 3, strike "before, on, or".

1 4. On page 10, after line 25 insert the following new  
2 subsection:

3 "(11) For contracts signed under the Employment and  
4 Investment Growth Act and the Invest Nebraska Act, no ethanol  
5 facility receiving benefits under the Ethanol Development Act shall  
6 be eligible for benefits under the Employment and Investment Growth  
7 Act or the Invest Nebraska Act unless it is producing at a rate of  
8 fifteen million gallons or more on an annual basis by October 1,  
9 2004.".

10 5. Renumber the remaining sections and correct internal  
11 references and the repealer accordingly.

Senator Schimek filed the following amendment to LR 14CA:  
AM2707

(Amendments to AM2401)

1 1. On page 2, line 23, after "the" insert  
2 "authorization."; and in line 24 strike "at" through "locations"  
3 and insert "whether casino gaming is authorized under this section  
4 or by initiative measure".

5 2. On page 3, line 3, after "the" insert  
6 "authorization."; and in line 4 strike "at such locations".

**NOTICE OF COMMITTEE HEARING**  
**Government, Military and Veterans Affairs**  
Room 1507

Thursday, February 26, 2004

8:45 a.m.

Jeanne V. Ross - State Personnel Board (rehearing)

(Signed) DiAnna R. Schimek, Chairperson

**BILL ON FIRST READING**

The following bill was read for the first time by title:

**LEGISLATIVE BILL 931A.** Introduced by Redfield, 12.

A BILL FOR AN ACT relating to appropriations; to amend Laws 2003, LB 407, section 220; to appropriate funds to aid in carrying out the provisions of Legislative Bill 931, Ninety-eighth Legislature, Second Session, 2004; to repeal the original section; and to declare an emergency.

**ANNOUNCEMENTS**

The Banking, Commerce and Insurance Committee designates LB 1185 as its priority bill.

The Business and Labor Committee designates LB 893 and LB 198 as its priority bills.

**UNANIMOUS CONSENT - Add Cointroducer**

Senator Hudkins asked unanimous consent to have her name added as cointroducer to LB 1046. No objections. So ordered.

**VISITORS**

Visitors to the Chamber were 6 Cub Scouts and sponsor from Kearney; Bill and Mary Blackburn from Broken Bow; 13 fourth-grade students, teacher, and sponsors from St. Paul School, Beatrice; 65 members of Leadership Tomorrow from Grand Island, York, and Hastings; Senator Pederson's grandson, Matthew, from North Platte; 26 students from Wayne State College; 8 student volunteers from libraries across the state; and Marilyn Bohn and Dwaine Uttecht from Ravenna.

The Doctor of the Day was Dr. Wade Fornander from Lincoln.

**ADJOURNMENT**

At 11:59 a.m., on a motion by Speaker Bromm, the Legislature adjourned until 9:00 a.m., Friday, February 20, 2004.

Patrick J. O'Donnell  
Clerk of the Legislature

